



AF 13671 \$
Dkt. #683

THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert E. Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS

Law Offices of Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, NY 11357

March 1, 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

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APPEAL BRIEF

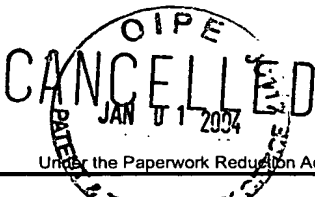
This Appeal Brief is submitted in connection with the above-identified application. In the August 28, 2003 Office Action issued by the United States Patent and Trademark Office, the Examiner, to whom this application is assigned, finally rejected all of Appellant's claims. A copy of the Office Action is attached hereto as **Exhibit A**.

On December 29, 2003, Appellant filed a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences (**Exhibit B**). An Appeal Brief in continuation of Appellant's Notice of Appeal was due February 29, 2004. Pursuant to MPEP § 1206, the deadline for the Appeal Brief is March 1, 2004, because February 29, 2004, falls on Sunday. Accordingly, this Appeal Brief is being timely filed.

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No fee other than the \$165.00 fee is deemed necessary in connection with the filing of this Appeal Brief. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.



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Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.		
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I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input type="checkbox"/> attorney or agent of record. Registration number _____ <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a) <u>36,479</u>		<u>Albert Wai Kit Chan</u> Signature <u>Albert Wai-Kit Chan</u> Typed or printed name <u>(718) 357-8836</u> Telephone number <u>December 29, 2003</u> Date
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		
<input checked="" type="checkbox"/> *Total of <u>2</u> forms are submitted.		

This collection of information is required by 37 CFR 1.191. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Dkt. #683



UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
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December 29, 2003

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Sir:

**NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES IN RESPONSE TO
AUGUST 28, 2003 FINAL OFFICE ACTION**

On August 28, 2003, a Final Office Action was issued by the United States Patent and Trademark Office (USPTO) in connection with the above-identified application. A response to the August 28, 2003 Final Office Action was originally due November 28, 2003. On December 04, 2003, Applicant filed a petition for a one-month extension of time and authorized the Commissioner to charge the corresponding fee for the petition for a one-month extension of time to the Deposit Account 50-1891. Therefore, a response to the August 28, 2003 Final Office Action is due December 28, 2003, which is a Sunday. Since a response is due the next business day when the deadline falls on a Saturday, Sunday or a federal holiday, i.e. December 29, 2003, this Amendment is being timely filed.

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U.S. Serial No. : 09/693,239
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Applicant hereby submits a Notice of Appeal in response to the August 28, 2003 Final Office Action issued by the USPTO in connection with the above-identified application. The Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences is attached herein as Exhibit A (1 page, in duplicate). A Notice of Appeal in response to the August 28, 2003 Final Office Action is due on December 28, 2003. Accordingly, this Notice of Appeal is being timely filed.

The required fee for a Notice of Appeal is ONE HUNDRED AND SIXTY-FIVE DOLLARS (\$165.00). Applicant hereby encloses a check for ONE HUNDRED AND SIXTY-FIVE DOLLARS (\$165.00) to cover the fee for the filing of the Notice of Appeal.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone at the number provided below.

No fee other than the ONE HUNDRED AND SIXTY-FIVE (\$165.00) for filing the Notice of Appeal is deemed necessary in connection with the filing of this NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES IN RESPONSE TO AUGUST 28, 2003 FINAL OFFICE ACTION.

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Filing Date : October 20, 2000
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However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

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Albert Wai-Kit Chan 12/29/03
Albert Wai-Kit Chan Date
Reg. No. 36,479

Respectfully submitted,

Albert Wai-Kit Chan

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Signature Albert Wai Kit Chan

Typed or printed name Albert Wai-Kit Chan

In re Application of
Herbert Howell WADDELL

Application Number
09/693,239

Filed
October 20, 2000

For **APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS**

Art Unit 3671

Examiner Robert Pezzuto

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 1.17(b))

\$ 165.00

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is:

\$ 165.00

☒ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1891. I have enclosed a duplicate copy of this sheet.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

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I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☐ attorney or agent of record.
Registration number _____

☒ attorney or agent acting under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a). 36,479

Albert Wai Kit Chan
Signature

Albert Wai-Kit Chan

Typed or printed name

(718) 357-8836

Telephone number

December 29, 2003

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 1.191. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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	Exhibit F U.S. Patent No. 318,359, Davis, J.E., Issued May 19, 1885	
	Exhibit G U.S. Patent No. 4,793,645, Decker, Mark, Issued December 27, 1988	
	Exhibit H U.S. Patent No. 6,120,073, Jones, G.W., Issued September 19, 2000	

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I. PARTY IN INTEREST

Appellant Herbert Waddell is the only party in interest.

II. RELATED APPEALS AND INTERFERENCES

No appeals or interferences have been filed to the knowledge of Appellant or his attorney which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-15 were rejected and Appellant appeals all claims.

IV. STATUS OF AMENDMENTS

No amendment has been filed by Appellant subsequent to the August 28, 2003 Office Action rejecting all claims.

V. SUMMARY OF INVENTION

An apparatus for gathering, picking up and carrying loose materials such as dirt, leaves, debris, trash, hay, ice, snow and other materials or objects consists of two grasping elements which each have shafts with grasping devices or heads at one end, and a coupling which joins their shafts. The grasping elements can be commercially available rakes or shovels. Loose materials are gathered and picked up by placing one hand on the shaft of each grasping element and drawing the heads together. When the coupling is positioned at the end near the grasping heads, the apparatus functions in the manner of a post hole digger. When it is positioned

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near the middle or far end of the shafts, the apparatus functions in the manner of rake tongs or tweezers tongs. The grasping devices can also be rotated about the axis of their shafts to permit their use side-by-side, that is as a double-width rake.

VI. ISSUE PRESENTED FOR REVIEW

The issue before the Board is whether the Examiner erred in rejecting as obvious under 35 U.S.C. §103(a) claims to Appellant's new apparatus for gathering, picking up and carrying loose materials.

VII. GROUPING OF CLAIMS

Claims 1-15 are in one group and stand together.

VIII. ARGUMENTS

1. Summary of Patent Prosecution History

On October 20, 2000, Appellant filed the above-identified application with the USPTO, claiming priority of Provisional Application Number 60/160,660, filed October 21, 1999. In the August 1, 2001 Office Action, the Examiner rejected all claims 1-12 as presented in the October 20, 2000 application: claims 9-10 were rejected under 35 U.S.C. § 112 while claims 1-12 were rejected under 35 U.S.C. § 103(a). On October 23, 2001, Appellant filed the Response to August 1, 2001 Office Action that amended the Abstract and claims 9-10 and added new claims 13-15. In the February 12, 2002 Office Action in Response to the October 23, 2001 Amendment, the Examiner rejected claims 1-15 under 35 U.S.C. § 103(a). On May 13, 2002, Appellant filed a Notice of Appeal from the Examiner

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to the Board of Patent Appeals and Interferences in Response to February 12, 2002 Final Office Action.

On October 15, 2002, appellant filed an Appeal Brief, which was filed in a timely manner with necessary petitions for extensions of time to file. On January 9, 2003, without notice that the Final Action was withdrawn, the Examiner issued an office action rejecting all claims 1-15 on different grounds than in the February 12, 2002 Final Office Action. The appellant traversed the Examiner's rejection and arguments in a response on January 31, 2003. However, the Examiner rejected appellant's arguments and issued a Final Office Action on August 28, 2003, which is attached as **Exhibit A**. In that Final Office Action, the Examiner cited references that had not been cited previously "for Applicants examination".

Appellant subsequently filed a "Communication in response to August 28, 2003 Final Office Action" on October 15, 2003, requesting withdrawal of the Final Action and an explanation of the new references, so that a proper response or appeal could be prepared. That communication is attached as **Exhibit C**.

On November 14, 2003, the Examiner issued an Advisory Action, attached as **Exhibit D**, stating that "The [October 15, 2003] proposed amendment will not be entered because it is not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal." In fact, Applicant did not present any proposed amendment, and has established convincing argument for allowing the claims in this Application. However, the Examiner has failed to respond substantively to the October 15, 2003 Communication.

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On December 4, Applicant submitted a "Communication in response to August 28, 2003, Final Office Action, Petition for one-month extension of time and Petition for withdrawal of the finality of the August 28, 2003 Final Office Action", attached as **Exhibit E**, in which the Examiner was requested to respond on the merits to the October 15 Communication in response to the Final Office Action, as required by the Manual of Patent Examining Procedure §707 (f) when rejections are traversed.

A Notice of Appeal was timely filed on December 29, 2003, which is attached as **Exhibit B**.

No response was made by the Examiner to subsequent phone calls. This Appeal Brief is submitted in response to the August 28, 2003 Final Office Action.

2. Section 103(a) Rejection: Obviousness

The basis for all obviousness rejections is set forth under 35 U.S.C. § 103(a) that provides:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following Examiner's remarks in support of the rejection are excerpted from the Final Office Action, and numbers in brackets have been added by applicant to designate points to be discussed and argued against in Section VIII 4. The Examiner asserts that:

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"Claims 1-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis '359 (attached as **Exhibit F**) in view of Decker '645 (attached as **Exhibit G**). [1] Jones (Jones '073, attached as **Exhibit H**) discloses an apparatus for gathering materials (figures 1-4), the apparatus comprising two grasping elements (A, A') each of which have shafts (F) with grasping means (B, B') at one end. Also, Jones shows the shafts being of 0.5 to 3 inches in diameter and two to six feet in length (as seen in Figures 1-3) and the grasping means having tines (as best seen in Figure 1). Further, [2] Davis teaches that it is well known in the art to connect to [sic] implements (figures 1-3) with a relatively moveable coupling means (figure 4), the handles being turnable within the coupling means when moved to the non-square portions of the handles (as seen in figures 1-3) but fails to show the coupling means made of a flexible material. However, Decker clearly teaches that it is known in the art to provide a hinged coupling means between two handles of such an implement (figures 1-3) and to construct the coupling means from a flexible material (column 2, lines 27-40). It would have been obvious to one having ordinary skill in the art to provide the apparatus of Davis with the teachings of Decker in order to provide a material gathering apparatus of greater operational range."

The Examiner Continues, as follows:

"In response to the Applicant's arguments is the following: [3] the Davis patent, as well as other pieces of cited art, show and teach that it is very well known and common to attach two similar earth working tools together (shovels in Davis, rakes in Jones, etc.) in order to grasp material between the tools.

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Davis further shows and teaches to use a metal, moveable hinge type device between the two tools to make such attachment. The Decker reference's sole use was to display that it is very obvious to make such a hinge from an elastomer material such as rubber. [4] The attorney states that the Davis reference is more than 180 [sic] years old and should bear on obvious modification. This point is well taken by the Examiner who strongly believes that if such a device was manufactured today, it would be of the elastomer material as taught by Decker if for no other reasons than cost and ease of manufacture. [5] Cited for the applicant's examination are more recent patents that disclose devices employed to join two cylindrical objects. The material of choice for these connectors again being an elastomer/plastic material."

3. The Cited References

Davis '359 teaches that two similar shovels can be connected with a sliding clamp (coupling means) to form an improved post-hole digger. The two shovels have shafts with square cross sections above the spade heads, but have circular cross sections at the upper ends. The square cross section of shaft A' bears on the "square" end of the clamp C (lines 41-43 and Figure 4) and the square cross section of shaft A bears on the straight, cylindrical rod that forms a fulcrum at the other end of the clamp (lines 42 -47 and Figure 4). A strong, rigid iron clamp is used to withstand the force on the fulcrum when the long handles are pulled outward to draw the shovels together in use. The flat sides of the square shafts bearing on straight surfaces of the clamp provide maximum bearing surface and prevent undesirable rotation of the shafts along their axes during operation of the device. Shaft A has a short horizontal section immediately above its spade head (B) to support the clamp

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at its operating position slightly above the spade heads (B and B'). The device will not perform as a post-hole digger unless the parts are as in Figures 2 and 3. The sliding clamp can be removed or shovel AB can be raised out of its operating position to permit shovel A'B' to be used separately and thrust into the ground. However, if the clamp is moved along one or both shafts so that clamp C does not connect them as shown in the figures, the device will not perform its function as a post-hole digger, the two shovels will not function together in any way, and no description or claims to that effect appear in the patent. Likewise, if the clamp is raised and either or both shovels are rotated out of the position shown in the figures the device will not perform its function as a post-hole digger, or any other useful function, and no description or claims to that effect appear in the patent. Davis clearly teaches that the clamp must be in one specific position for the two shovels to function as a post-hole digger, that the clamp must be rigid and strong and that the two shovels will not serve a useful purpose if they are rotated so that they are not directly opposed.

Decker '645 discloses that two handles can be attached to a snow shovel with a hinge in such a way that a "swing shovel" is formed that requires less stooping and lifting by the operator. The end of one handle is connected by a hinge of elastomeric material to the shaft of the other handle. Movement of the hinge along the shaft or rotation of the handles is undesirable, so the hinge is fixed to the handles with adhesives or other means. The hinge is designed (Figures 24, 24a, 24b, 24c, and 24d) to permit only minimal side to side relative motion of the two handles about the pivot point, that is, to act as a hinge and not as a completely flexible coupling (Column 1, lines 32-40). There is no explanation of why a simple metal hinge could not perform as well as a flexible hinge.

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The device of Decker '645 bears no resemblance to the device claimed by the applicant in that the Decker device has only one functional head, a shovel. Lacking the two functional grasping heads in the applicant's device it cannot perform the same functions, namely gathering, grasping and lifting loose objects such as leaves. Furthermore, the flexible coupling is fixed in place, so cannot be moved along the shafts and the shafts can not be rotated along their axes. Regarding Decker '645, the Examiner stated "The Decker reference's sole use was to display that it is very obvious to make a hinge from an elastomer material such as rubber". (See August 28, 2003 Final Office Action, Page 3, 2nd para. in **Exhibit A**)

Jones '073 claims a device which couples the shafts of two grasping devices (rakes, shovels or scoops) at a pivot point about midway up the shafts. The couplings are fixed because bolts or rods pass through the shafts to provide for rotation of the elements about the pivot point. However, the bolts or rods prevent moving the pivot point along the shafts or rotating the grasping devices around the axes of their shafts. Jones issued on September 19, 2000, so was not known at the priority date of Appellant's application (October 20, 1999). The Examiner referred to Jones '073, but did not include it in the statement of rejection, and gave no explanation of it's relevance to the rejection.

Three other patents were referred to for the first time in the Final Office Action dated August 28, 2003. They are Kramer '332, Shioda '961 and Shioda Design '725, which are attached to the Final Office Action (**Exhibit A**). Regarding these, the Examiner stated, "Cited for the applicant's examination are more recent patents that disclose devices employed to join two cylindrical objects. The material of choice for these connectors again being an elastomer/plastic material.", but did not include them in the

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statement of rejection, and gave no explanation of their relevance to the rejection.

4. Section 103 Rejection; Burden of Proof

Case law establishes that there are three criteria for establishing a *prima facie* case for Section 103 (a) obviousness rejection, namely: 1) there must be some suggestion or motivation, either in the reference or the knowledge of those skilled in the art, to modify the reference or combine reference teachings; 2) there must be a reasonable expectation of success; and 3) the prior art or combined references must teach or suggest all the claim limitations. In re Vaeck, 947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991).

It is well established that the PTO bears the initial burden under § 103 of establishing a case of prima facie obviousness. In re Bell, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (citing In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988)). "A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." Id. (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)). See also, In re Wright, 848 F.2d 1216, 1219, 6 USPQ2d 1959, 1961 (Fed. Cir. 1988) (a *prima facie* case of obviousness requires that the prior art suggest the claimed compositions' properties and the problem the applicant attempts to solve). Thus, it is the Examiner's responsibility to show that some objective teaching or suggestion in the applied prior art, or knowledge generally available in the art would have led one of ordinary skill in the art to arrive at the claimed invention. This is an earlier statement of the first criteria of In re Vaeck above.

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In Section VIII 2, the Examiner used certain points in support of his rejection which Appellant wishes to dispute, as follows:

[1] Jones '073 is, of course not prior art, and can not be used as part of the rejection reasoning because it was filed on November 12, 1998 and issued on September 19, 2000.

[2][3] Examiner alleged that two similar tools can be attached together in order to grasp material between the tools. However, in every instance cited by the Examiner, the tools are joined at a fixed point, whether by rigid or flexible means, teaching that it is not desirable to move the attachment point. The statement, "Davis further shows and teaches to use a metal, moveable hinge type device between the two tools to make such attachment" is not correct in that the attachment made is not moveable in a functional sense. It only works in one position, and when moved from that position it no longer serves as an "attachment". Appellant respectfully argues that the "metal, moveable hinge type device" is only designed to permit quick, easy disassembly of the post hole digger so that the shovels can be used independently. The same result could be achieved with a modern post hole digger comprising two shovels joined with a metal hinge by removing the connecting pin from the hinge. Likewise, the tools in Davis are not "turnable within the coupling means" in a functional sense, because the shovel heads would not be in a useful configuration when one shovel is raised to the point where rotation within the coupling means is possible. At that point, the post hole digger would be nearly disassembled. Therefore, the Examiners characterization of the "sliding clamp" of Davis '359 as moveable and turnable is not correct from a functional perspective, and would not suggest or motivate one to follow their example of moveable, turnable couplings.

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[4] The Examiner stated "the Davis reference is more than 180 [sic] years old and should bear on obvious modification", and speculates that if the Davis device was made today it would have an elastomer coupling. This indicates that the Examiner apparently gives little weight to the argument that if a reference is old and nobody has made the applicant's discovery, it must have not have been an obvious discovery. The Davis patent was issued about 114 years before the priority date of the Appellant's application and the Decker patent issued about 11 years before that date. Appellant argued several times, the last of which was in the October 15, 2003 "Communication in Response to August 28, 2003, Final Office Action", that the courts consider such facts are relevant to the issue of obviousness, as follows:

"The very long time that the devices to gather, pick up and carry loose materials have been known and improved by scores of inventions argues that no one has thought of it in all that time and the subject invention was not obvious to those skilled in the art. The Supreme Court has long established the principle that such secondary considerations as "long felt but unsolved needs [and] failure of others" may be relevant as indicia of obviousness or nonobviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966). "Thus evidence rising out of the so-called 'secondary considerations' must always when present be considered en route to a determination of obviousness." Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 1538, 218 USPQ 871, 876 (Fed. Cir. 1983) (quoting In re Sernaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983)). Evidence of secondary considerations may often be the most probative and cogent evidence in the record and all pieces

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of evidence should be fully considered and each should be given appropriate weight. Id. 1538-1539. Thus, Appellant respectfully submits that the Examiner consider that no one has thought of the claimed invention despite the fact that the devices to gather, pick up and carry loose materials have long been known and improved by scores of inventions."

[5] The three new references cited for the first time in the Final Office Action were not included in the rejection statement, so are not to be considered because:

"Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively stated in the rejection." See In re Hoch, 57 CCPA 1292, 428 F.2d 11341, 166 USPQ 406 footnote 3 (1970).

Therefore, these references are irrelevant and will not be discussed here. However arguments against their use to establish obviousness was argued in the October 15, 2003 "Communication in Response to August 28, 2003, Final Office Action" (**Exhibit C**), which is part of his record.

Regarding the first criterion for rejection on grounds of obviousness, the Examiner stated in the office action that "It would have been obvious to one having ordinary skill in the art to provide the apparatus of Davis with the teachings of Decker in order to provide a material gathering apparatus with a greater operational range". If the apparatus of Davis '359 is combined with the teachings of Decker '645, one would have a post hole digger with a fixed, flexible coupling just above the shovel heads. Such a fixed, flexible coupling would prevent separate use of the

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shovels and would prevent lifting shovel AB up so that A'B' could be thrust into the ground separately. Whether fixed or moveable, it would permit the shovels to move from side to side somewhat, which Davis took steps to prevent by using square shafts in a rigid coupling, which he called a sliding clamp. This clamp is designed to minimize twisting and side to side movement of the shafts. Hence use of a flexible coupling as in Decker '645 would negate all of the key features of Davis '359. The design of Davis '359 teaches away from the use of a flexible coupling, so the suggestions or motivations to combine the apparatus of Davis with the teachings of Decker are lacking, and the first criterion is not met.

Jones '073 is, of course is not prior art, and can not be used as grounds for an obviousness rejection. However, Jones can be considered a good example of the state of the art at the time, and even somewhat after, the Applicant made his invention. Jones teaches that a fixed coupling is needed to permit the two grasping devices to work in opposition to each other and prevent rotation of the grasping devices along the axes of their shafts. Although Davis '359 and Decker '645 were both known to those skilled in the art, Jones, who would be considered "skilled in the art", did not combine the teachings of Davis and Decker to improve his device. Jones presents a broad description of the art of gathering leaves in his background section, where he states that a suitable device for picking up leaves can be made by joining the shafts of two leaf rakes with a bolt at about their midpoint. No mention of functionally moveable, flexible couplings is made. There is nothing in the claims or specification that indicates that Jones considered that a functionally moveable, flexible coupling would improve his invention, so the appellant's improvement was not obvious to Jones who was "skilled in the art". This is further evidence of failure to meet the first criterion for an obviousness

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rejection.

Regarding the second criterion, Davis '359 teaches the use of a fixed, rigid coupling that cannot be moved to alternate functional positions. Decker '645 also teaches that a fixed coupling is needed, and both references employ couplings that are specifically designed to prevent rotation of the tools about their axes in a functional configuration. Hence, the references individually and combined teach away from the Appellant's device and suggest that use of a flexible coupling which can be moved to provide functional pivot points anywhere along the length of the shafts and permits rotation of the elements along the axes of their shafts to change their operational configuration would result in failure. Therefore, these references combined would not create a reasonable expectation of success with the appellant's invention and the second criterion is not met.

Regarding the third criterion, all prior art for devices of the nature of the subject invention shows the use of couplings that are useful only in a single configuration that restricts the motion of the coupled elements. Davis '359, employs a rigid coupling that can be moved, but the device only has utility if the shovels are in a single configuration. Moving the clamp or rotating the shovels in the clamp destroys the utility of the device. Decker '645 employs a fixed, flexible hinge between two handles of a single headed shovel. The hinge cannot be moved and prevents rotation of the handles along their axes, which would not be a desirable feature if it was possible. Individually or combined, these references do not teach or suggest a device with a flexible coupling which can be moved to provide functional pivot points anywhere along the length of the shafts and would also permit rotation of the elements along the axes of their shafts to change their

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operational configuration. Since the prior art or combined references must teach or suggest all of the claim limitations, and these do not, the third criterion for obviousness has not been proven.

Additionally, Appellant further submits that the Examiner has failed to supply information and references as may be useful in judging of the propriety of continuing the prosecution of his application. 35 U.S.C. § 132(a) provides in pertinent parts:

Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, *together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application*; and if after receiving such notice, with or without amendment, the application shall be reexamined. (emphasis added)

In the case under appeal, for the reasons stated above, the Examiner failed to provide clear explanations of the pertinence of each reference and to specify each rejected claim.

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IX. CONCLUSION

For reasons stated above, Appellant respectfully submits that the Examiner failed to satisfy his burden of proof to establish a prima facie case of obviousness and thus the rejection of the pending claims under 35 U.S.C. § 103 cannot stand and should be withdrawn.

Appellant respectfully requests that the above remarks be entered and made of record in the present application. An allowance is earnestly requested.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Appellant's undersigned attorney invites the Examiner to telephone at the number provided below.

Respectfully submitted,

Albert Wai-Kit Chan

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I hereby certify that this paper is being deposited this date with the U.S. Postal Service with sufficient postage for first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Albert Wai-Kit Chan 3/1/04
Albert Wai-Kit Chan Date
Reg. No. 36,479

What is claimed is:

1. An apparatus for gathering, picking up and carrying materials comprising
 - a) two grasping elements which each have shafts with grasping means at one end, and
 - b) a flexible coupling means which can be moved along the shafts of the grasping elements to connect them together while permitting each of them to rotate along the axes of their shafts and to pivot with respect to each other so that the grasping heads can be brought together or moved apart from each other.
2. An apparatus as in claim 1, wherein the grasping elements have shafts with diameters of 0.5 to 3 inches.
3. An apparatus as in claim 1, wherein the grasping elements have shafts with lengths of two to six feet.
4. An apparatus as in claim 1, wherein each grasping element has a grasping head that consists of tines arrayed to form a rake.
5. An apparatus as in claim 4, wherein the grasping elements are commercially available garden rakes for raking leaves , dirt or other materials.
6. An apparatus as in claim 1, wherein each grasping element has a grasping head fabricated as the head of a shovel from sheets of metal, wood or plastic that extend along the axes of the shafts for three to eighteen inches and extend sidewise equally on both sides of the shaft for a total width of three to twenty four inches.
7. An apparatus as in claim 6, wherein the grasping elements are commercially available shovels for shoveling dirt, snow or other materials.

8. An apparatus as in claim 1, wherein the coupling means consists of two loops that have diameters slightly larger than the diameters of the shafts to be connected and said loops are connected by a flexible linkage means having a length of one fourth to 4 inches.
9. An apparatus as in claim 8, wherein the entire coupling means is molded of, or cut from, sheets of an inherently flexible material.
10. An apparatus as in claim 8, wherein the flexible linkage of the coupling means is made of rigid material fabricated in the form of a chain to impart flexibility.
11. An apparatus as in claim 8, wherein the coupling means comprises loops of material that are connected by flexible material in the form of a band.
12. An apparatus as in claim 8, wherein the loops of the coupling means contain clamping devices that permit them to be moved along the shafts to a desired position and then clamped there to prevent further unwanted movement.
13. An apparatus as in claim 8, wherein the coupling material is rubber.
14. An apparatus as in claim 8, wherein the coupling material is plastic.
15. An apparatus as in claim 8, wherein the coupling material is metal.

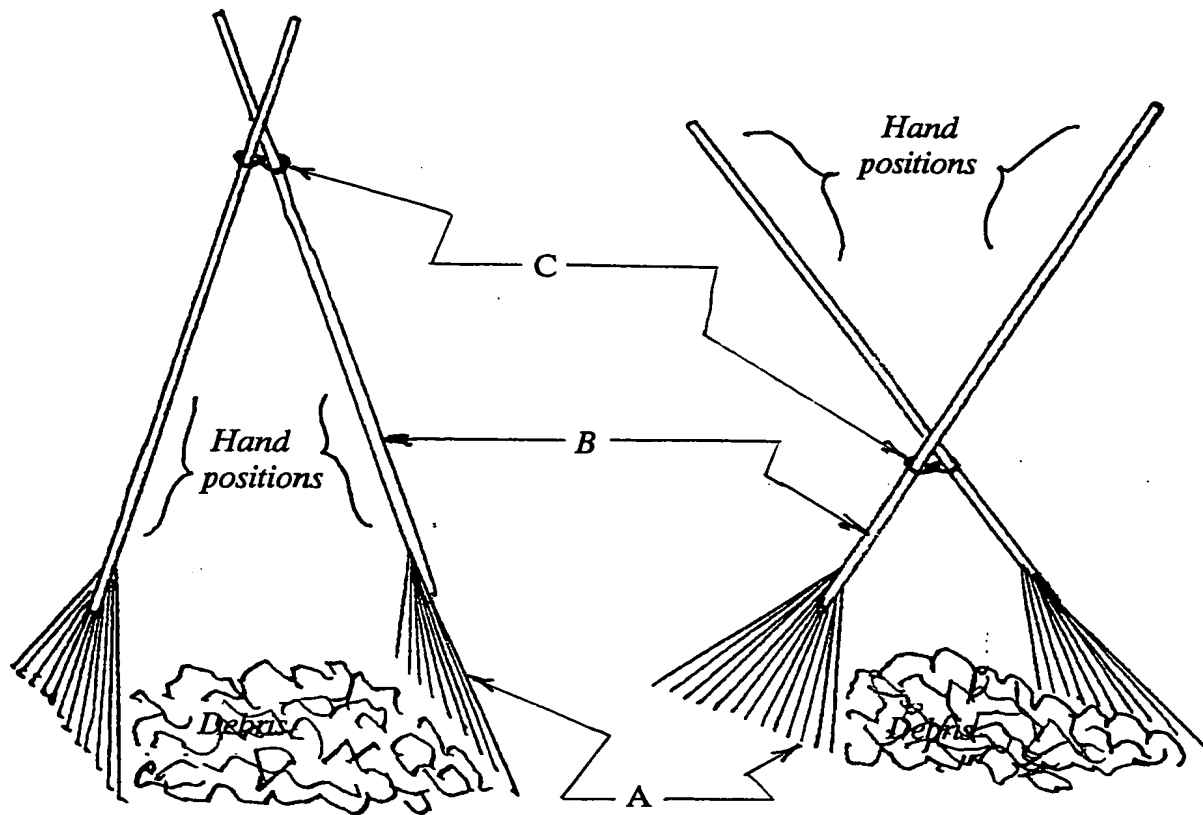


Figure 1

Figure 2

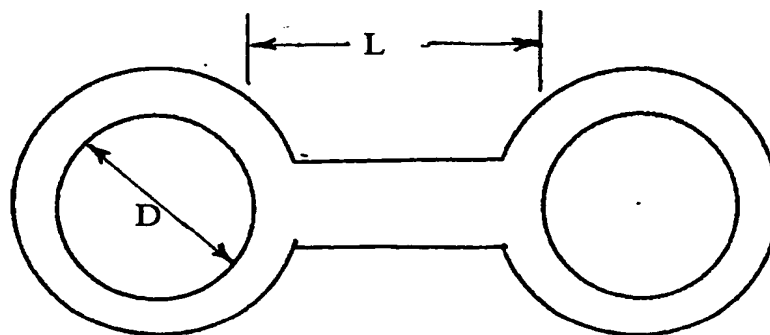


Figure 3



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,239	10/20/2000	Herbert Howell Waddell	IP-902	8560

7590 08/28/2003

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EXAMINER

PEZZUTO, ROBERT ERIC

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/693,239

Applicant(s)

WADDELL, HERBERT HOWELL

Examiner

Robert E Pezzuto

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Note to the attorney of record: The Office Action dated January 8, 2003 was not an answer to the appeal brief filed October 22, 2002 but rather to reopen prosecution of the application on the merits in light of new art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis '359 in view of Decker '645. Jones discloses an apparatus for gathering materials (figures 1-4), the apparatus comprising two grasping elements (A,A') each which have shafts (F) with grasping means (B,B') at one end. Also, Jones shows the shafts being of 0.5 to 3 inches in diameter and two to six feet in length (as seen in figures 1-3) and the grasping means having tines (as best seen in figure 1). Further, Davis teaches that it is well known in the art to connect to implements (figures 1-3) with a relatively moveable coupling means (figure 4), the handles being turnable within the coupling means when moved to the non-square portions of the handles (as seen in figures 1-3)

but fails to show the coupling means made of a flexible material. However, Decker clearly teaches that it is known in the art to provide a hinged coupling means between two handles of such an implement (figures 1-3) and to construct that coupling means from a flexible material (column 2, lines 27-40). It would have been obvious to one having ordinary skill in the art to provide the apparatus of Davis with the teachings of Decker in order to provide a material gathering apparatus with a greater operational range.

In response to the applicant's arguments is the following: The Davis patent, as well as many other pieces of cited art, show and teach that it is very well known and common to attach two similar earth working tools together (shovels in Davis, rakes in Jones, etc) in order to grasp material between the tools. Davis further shows and teaches to use a metal, moveable hinge type device between the two tools to make such attachment. The Decker reference's sole use was to display that it is very obvious to make such a hinge from an elastomer material such as rubber. The attorney states that the Davis reference is more than 180 years old and should bear on obvious modification. This point is well taken by the examiner who strongly believes that if such a device was manufactured today, it would be of the elastomer material as taught by Decker if for no other reasons then cost and ease of manufacture. Cited for the applicant's examination are more recent patents that disclose devices employed to joint two cylindrical objects. The material of choice for these connectors again being an elastomer/plastic material.

Applicant's arguments filed January 31, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert E Pezzuto whose telephone number is (703) 308-1012. The examiner can normally be reached on 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on (703) 308-3870. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 308-8623 for regular communications and (703) 308-8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1212.


Robert E Pezzuto
August 22, 2003

Notice of References Cited

Application/Control No.

09/693,239

Applicant(s)/Patent Under

Reexamination

WADDELL, HERBERT HOWELL

Examiner

Robert E Pezzuto

Art Unit

3671

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-3,521,332	07-1970	Name not available	403/188
	B	US-4,688,961	08-1987	Shioda et al.	403/389
	C	US-D295,725	05-1988	Shioda, Mitsugu	D8/396
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

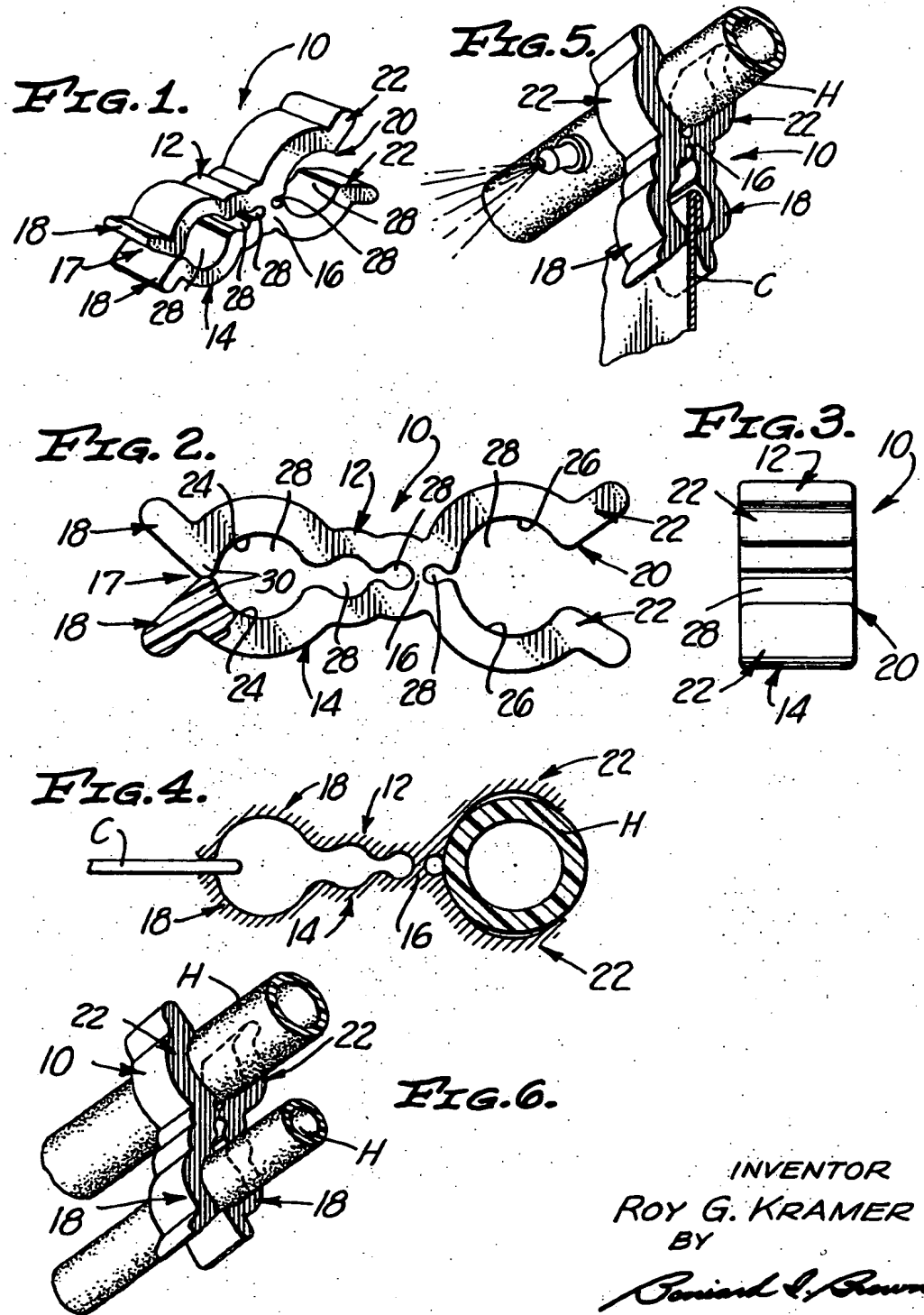
July 21, 1970

R. G. KRAMER
DOUBLE ENDED CLIP

3,521,332

Filed March 4, 1968

2 Sheets-Sheet 1



INVENTOR
ROY G. KRAMER
BY

Benjamin L. Brown
ATTORNEY

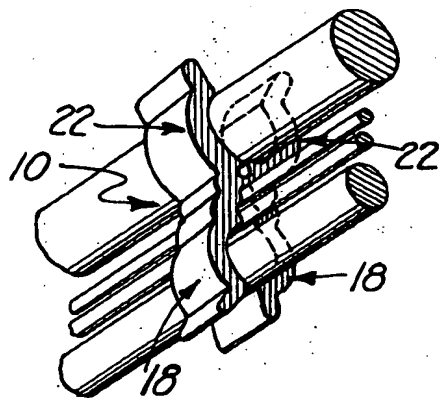
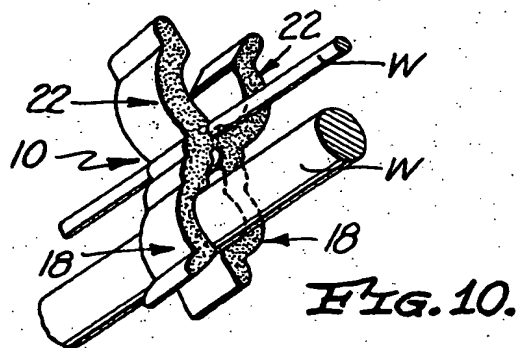
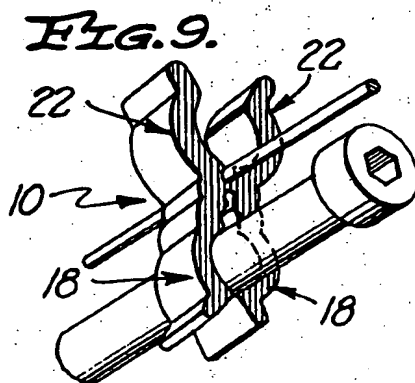
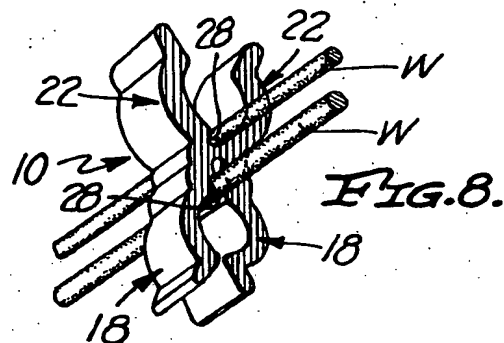
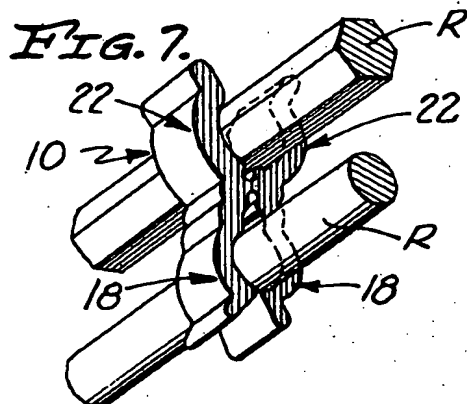
July 21, 1970

R. G. KRAMER
DOUBLE ENDED CLIP

3,521,332

Filed March 4, 1968

2 Sheets-Sheet 2



INVENTOR
ROY G. KRAMER
BY
Samuel J. Brown
ATTORNEY

United States Patent Office

3,521,332

Patented July 21, 1970

1

3,521,332

DOUBLE ENDED CLIP

Roy G. Kramer, 1342 Signal Drive,
Pomona, Calif. 91767

Filed Mar. 4, 1968, Ser. No. 710,268
Int. Cl. A44b 21/00

U.S. Cl. 24-81

2 Claims

ABSTRACT OF THE DISCLOSURE

A double ended clip having a pair of arms disposed side by side and pivotally joined intermediate their ends by resilient fulcrum means which yieldably retain in gripping relation two separate pairs of gripping jaws located at opposite ends, respectively, of the arms. The gripping faces of the confronting gripping jaws are recessed to define graduated work receiving openings in the jaws, such that either of the jaws may be used individually or both of the jaws may be used simultaneously to grip a number of articles in side by side relation.

BACKGROUND OF THE INVENTION

Field of the invention

This invention relates generally to clips and more particularly to a novel double ended clip.

Prior art

A variety of clip devices have been devised for joining a number of separate articles. Such clips are generally characterized by a single pair of gripping jaws between which are placed all of the articles to be held. Exemplary of this type of clip, for example, is an ordinary clothespin. In many applications, however, it is useful to have a clip which may be used to join articles in side by side relation. This invention provides such a clip. As will appear from the ensuing description, however, the present clip may be employed, as well, in much the same way as a conventional clip.

SUMMARY OF THE INVENTION

The clip of the present invention is a double ended clip which is characterized by a pair of clip arms disposed side by side and having first and second pairs of confronting gripping jaws on opposite ends, respectively, of the arms. The arms are pivotally joined intermediate their ends by resilient fulcrum means which normally retain the respective confronting gripping jaws in gripping relation. The gripping jaws may be used independently or simultaneously. For example, all of the articles to be gripped may be placed between the jaws of one jaw pair. Alternatively, one or more of the articles may be placed between the jaws of one jaw pair and the remaining article or articles may be placed between the jaws of the other jaw pair.

The present clip may be employed for a wide variety of uses. Among these uses are a parallel separator for joining electrical power lines, hoses, cables, and the like, in spaced parallel relation, a holding clip for rods and the like of various geometric shapes in cross-section, a photographic film drying clip, a paper hanger, a drapery and curtain hanger, a supporting clip for attaching a water hose to a support such as a nursery pot, and a clothespin. A feature of the invention which is related to certain of these applications resides in the fact that the opposing gripping faces of one or both of confronting gripping jaws may be recessed to provide the jaws with a number of work receiving openings which are graduated in size to receive rods, wires, hoses, and the like, of various diameters and cross-sections. The gripping jaws of one jaw pair are normally retained in mutual

2

gripping contact, such that this pair of jaws may be utilized to attach the clip to a relatively thin article, such as a photographic film, nursery container, or the like. According to the preferred practice of the invention, the resilient fulcrum means which pivotally joins the clip arms is provided by a slender web section which extends between and is formed integrally with the arms in such a way that the clip may be economically fabricated in one piece from plastic by an injection molding process, whereby the clip is uniquely adapted for mass production.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a perspective view of a double ended clip according to the invention;

FIG. 2 is an enlarged side elevation of the clip;

FIG. 3 is an end view of the clip;

FIG. 4 diagrammatically illustrates certain unique pivotal actions and force relationships which obtain in the present clip;

FIG. 5 is a perspective view illustrating the manner in which the clip is used to attach a water hose to a nursery container or other support;

FIG. 6 is a perspective view illustrating the clip being used to join a pair of hoses in side by side relation;

FIG. 7 is a perspective view illustrating a pair of rods joined in side by side relation by means of the clip;

FIG. 8 illustrates the clip being used in the manner similar to that shown in FIG. 7 for joining relatively slender rods or wires;

FIG. 9 illustrates an alternative use of the clip as a bolt or implement holder;

FIG. 10 illustrates the manner in which the present clip, when constructed of electrically insulating material, such as plastic, may be employed to join bare or un-insulated electrical conductors; and

FIG. 11 illustrates the clip being used to join a relatively large number of separate articles.

DESCRIPTION OF THE PREFERRED EMBODIMENT

Turning now to these drawings, there is illustrated a double ended clip 10 according to the invention. This clip has a pair of arms 12 and 14 disposed side by side and pivotally joined intermediate their ends by resilient fulcrum means 16. The clip arms 12 and 14 are mirror images of one another and are shaped to define a first pair 17 of confronting jaws 18 at one end of the arms and a second pair 20 of confronting gripping jaws 22 at the opposite end of the arms. The resilient fulcrum means 16 yieldably urges the gripping 18, 22 to and retains these jaws in their gripping relation illustrated in FIG. 2. Gripping jaws 18 have confronting gripping faces 24. Gripping jaws 22 have confronting gripping faces 26. In the particular clip of the invention which has been selected for illustration, the gripping faces 24 of the confronting gripping jaws 18 are arranged to abut one another adjacent the outer ends of these jaws when the latter are in gripping relation, as shown at the left-hand end of FIG. 2. The gripping faces 26 of the confronting gripping jaws 22, on the other hand, are spaced when these jaws are disposed in gripping relation, as shown at the right-hand end of FIG. 2.

According to a feature of the invention, the gripping faces 24, 26 of the gripping jaws 18, 22 are recessed in the manner illustrated in FIG. 2 to define in the respective confronting gripping jaws a number of work receiving openings 28 of graduated size. In the particular clip illustrated, for example, the left-hand gripping jaws 18 have three generally circular work receiving openings 28 including a relatively large diameter opening adjacent the outer ends of the jaws, a relatively small diameter opening adjacent the fulcrum means, and an intervening work re-

ceiving opening of intermediate diameter. Similarly, the gripping jaws 22 have a relatively large diameter work receiving opening adjacent the outer ends of the jaws and a relatively small diameter opening adjacent the fulcrum means.

The opposite extremities of the clip arms 12, 14 extend outwardly in acute angular relation to the longitudinal axis of the clip so as to provide each pair of gripping jaws 18, 22 with a tapered entrance or mouth which facilitates insertion between the jaws of the articles to be joined.

According to another feature of the invention, the fulcrum means 16 which pivotally joins the clip arms 12, 14 comprises a relatively slender web section which extends laterally between and is formed integrally with the arms, as may be readily observed in FIGS. 1 and 2. This feature of the invention permits economical fabrication of the clip in one piece from a suitable material, such as plastic, by an injection molding process. It is evident, of course, that the outer longitudinal edge surfaces of the clip arms 12, 14 may conform to any profile. Preferably, these arms edges are contoured to provide the arms with a generally uniform cross-section from end to end, as shown.

As noted above and illustrated in FIG. 2, the gripping faces 24 of the left-hand gripping jaws 18 are normally disposed in abutting contact adjacent the outer ends of these jaws. More specifically, the jaws 18 are shaped to provide them with confronting, generally V-shaped gripping jaw portions 30 in the region between the left-hand, large diameter jaw opening 28 and the out-turned extremities of the jaws. The resilient fulcrum means or web 16 is stressed to urge the jaw portions 30 into abutting contact, as shown. The clip arms 18 are sized in cross-section to be relatively stiff in their lateral bending mode, that is, to possess substantial lateral bending resistance, and are yet resiliently flexible to a degree such that the gripping jaws 18 are resiliently yieldable to some extent in their lateral direction. This permits the jaws 22 to yield sufficiently to enable a relatively large diameter article, such as a hose or rod, to be forced laterally into the large diameter opening 28 in the jaws when the confronting jaw portions 30 of the opposite gripping jaws 18 are disposed in abutting contact. In this regard, attention is directed to FIG. 4 in which it will be observed that when such a relatively large diameter article is inserted between the jaws 22, the article will exert outward lateral forces on the jaws. These forces, in turn, produce moments on the clip arms 12, 14 about the fulcrum means 16 which urge the opposite jaws 18 into gripping relation. This particular arrangement of the present clip is unique in that it adapts the clip for attaching a water hose H, or the like, to a relatively slender supporting wall C, such as the wall of a nursery can, as illustrated in FIGS. 4 and 5.

It will now be evident to those versed in the art that the present invention is susceptible of a wide variety of uses and applications. One of these uses is that just mentioned and illustrated in FIGS. 4 and 5. FIGS. 6 through 11 illustrate other possible uses of the clip. In FIG. 6, the clip is employed to join a pair of hoses H of different diameter in side by side relation. FIG. 7 illustrates the clip being employed to join a pair of metal rods R. It is significant to note here that the rods may have various shapes in transverse cross-section. In FIG. 7, for example, one rod has a circular cross-section while the other rod has a hexagonal cross-section. FIG. 8 illustrates two wires W joined by the present clip. In this case, one wire is relatively small in diameter and is inserted into the small diameter opening 28 in the gripping jaws 22. The other wire is somewhat larger in diameter and is inserted into the intermediate diameter opening of the gripping jaws 18. FIG. 9 illustrates the clip used as a bolt or implement holder. FIG. 10, like FIG. 8, illustrates the clip being

used for joining a pair of electrical wires or conductors W. In this case, however, the conductors are bare or uninsulated conductors. Conceivably, the clip may be either constructed of an electrically conductive material, in order to provide a current flow path between the conductors, or of an electrically insulating material, such as plastic, in order to insulate the conductors from one another. Turning finally to FIG. 11, it will be observed that the present clip may be employed to hold simultaneously or join a relatively large number of articles of various sizes and shapes.

It will be evident to those versed in the art, from the foregoing description, that the gripping jaws 18, 22, and particularly their gripping faces 24, 26, may be shaped and recessed in such a way as to provide the jaws with any number of work receiving openings of any desired shape and cross-section. Accordingly, it should be understood that the clip is not limited to the particular number and shape of work receiving openings shown. Moreover, it will be appreciated that while some of the possible uses of the present clip have been illustrated in the drawings, these uses are not intended to be exhaustive. In this regard, attention is directed to the earlier listing of other possible uses of the clip. Numerous other applications exist also, of course.

While the invention has been disclosed in connection with one physical embodiment thereof, it will be immediately evident that various modifications of the invention are possible.

What is claimed as new in support of Letters Patent is:

1. A double ended clip comprising:
 - a unitary molded plastic clip body including a pair of clip arms disposed side by side and a resilient web section integrally joining said arms between their ends to form a fulcrum about which said arms may rock to spread the corresponding ends of the arms,
 - said arms having confronting generally semi-circular recesses on their inner surfaces defining generally circular openings spaced along said arms for receiving articles to be gripped,
 - there being a pair of said openings at each side of said web section, and the radii of the recesses defining the openings nearest said web section being less than the radii of the recesses defining the remaining openings, whereby said clip body has a pair of inner small diameter openings adjacent and at opposite sides of said web section and a pair of outer large diameter openings outwardly of said inner openings, said inner openings defining therebetween said web section and the walls of said inner openings providing the side walls of said web section, and said arms having a generally uniform thickness throughout.
2. A clip according to claim 1 wherein:
 - said arms have gripping jaws at one end which normally abut one another and are adapted to be spread by squeezing the opposite end of said arms to wrap said arms about said fulcrum.

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DONALD A. GRIFFIN, Primary Examiner

United States Patent [19]
Shioda et al.

[11] **Patent Number:** 4,688,961
[45] **Date of Patent:** Aug. 25, 1987

- [54] **COMBINATION CLIP**
[75] **Inventors:** Mitsugu Shioda, Yokohama; Atsushi Takahashi, Fujisawa, both of Japan
[73] **Assignee:** Nifco Inc., Yokohama, Japan
[21] **Appl. No.:** 838,101
[22] **Filed:** Mar. 10, 1986
[30] **Foreign Application Priority Data**
Mar. 15, 1985 [JP] Japan 60-36113[U]
[51] **Int. CL.** B25G 3/36
[52] **U.S. CL.** 403/389; 403/397;
403/406.1; 24/575; 24/669
[58] **Field of Search** 403/389, 385, 397, 406.1,
403/340, 373, 314, 309, 364, 339, 331; 24/579,
575, 589, 669, 702; 411/509
[56] **References Cited**

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Primary Examiner—Cornelius J. Husar
Assistant Examiner—Peter M. Cuomo
Attorney, Agent, or Firm—Trexler, Bushnell, Giangiorgi & Blackstone, Ltd.

[57] **ABSTRACT**

A combination clip comprises a pair of identically shaped clips each having a holder portion provided at one end for detachably holding a supported member and a pivotal coupler portion provided at the other end. The pivotal coupler portion includes a shaft portion and a clamp portion which is open on one side, extends perpendicular to the shaft portion in spaced relation to the free end thereof and is capable of being fitted on the shaft portion of the other clip. The pair of clips can be pivotally coupled together for relative rotation about each other's shaft portions with the clamp portion of each clip fitted on the shaft portion of the other.

3 Claims, 9 Drawing Figures

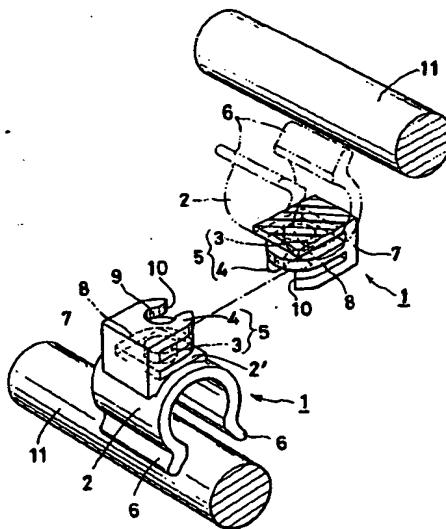


FIG. 3

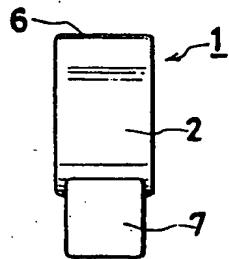


FIG. 2

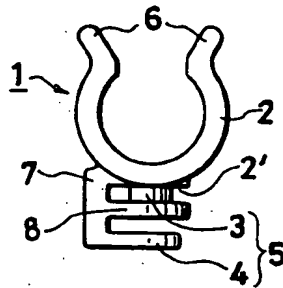


FIG. 4

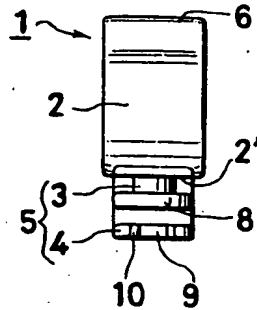


FIG. 5

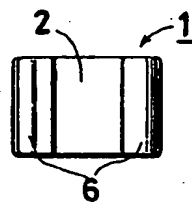


FIG. 6

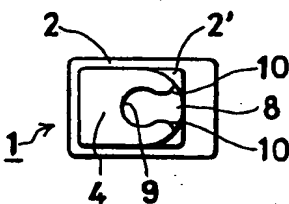


FIG. 9

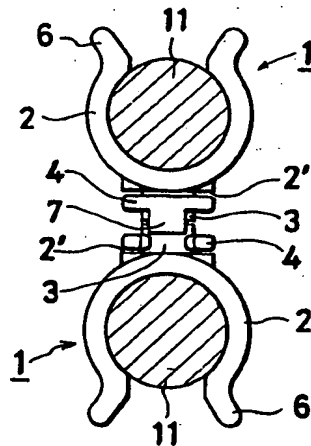
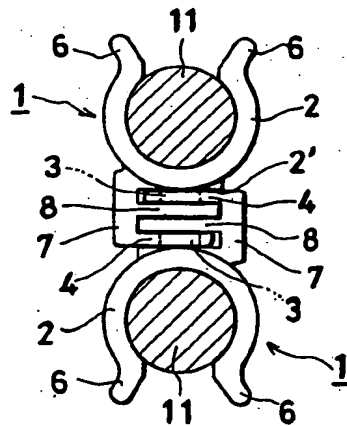


FIG. 7



COMBINATION CLIP

FIELD OF THE INVENTION AND RELATED ART STATEMENT

This invention relates to a combination clip which consists of a pair of clips mutually rotatably coupled together for holding respective supported members at a fixed distance from each other.

A prior art combination clip of the general type to which the present invention relates is disclosed in Japanese Utility Model Publication SHO No. 48(1973)-35637.

The combination clip disclosed in this Publication consists of a pair of clips, each of which has a holder portion provided at one end and a coupler portion provided at the other end. The coupler portion of one of the two clips is a spherical projection, while the coupler portion of the other clip is a spherical recess for receiving the spherical projection. The two clips are rotatably coupled together by the engagement between the spherical projection and the spherical recess.

However, since this combination clip consists of a pair of clips with coupler portions having different shapes, it is necessary to provide two molds having different shapes for forming the pair of clips. In addition, the two clips having the different shapes can only be used together as a pair, i.e. they cannot be used independently.

To reduce the manufacturing cost and facilitate handling, there is required a combination clip consisting of a pair of identically shaped clips but capable of fulfilling the same functions as the prior art combination clip.

OBJECT AND SUMMARY OF THE INVENTION

An object of the invention is to provide a combination clip which is economical and can be easily handled.

To attain the above object of the invention, there is provided a combination clip comprising a pair of identically shaped clips, each of the clips having a holder portion provided at one end for detachably holding a supported member and a pivotal coupler portion provided at the other end, the pivotal coupler portion including a shaft portion and a clamp portion, the clamp portion being open on one side, extending perpendicular to the shaft portion in spaced relation to the free end thereof and being capable of being fitted on the shaft portion of the other clip, whereby the pair of clips can be coupled together for rotation about each other's shaft portions with the clamp portion of each clip fitted on the shaft portion of the other.

Thus, according to the invention the pair clips, which are of identical shape, can be molded using a common mold. Further, the clips of any given combination clip are each interchangeable with either clip of a different combination clip. The pivotal coupler portions may be coupled together after attaching the supported members, e.g. wires or pipes, to the holder portions of the individual clips. Alternatively, the two clips may be coupled together before attaching the supported members to the holder portions. The two clips may be coupled together by forcibly inserting the clamp portion of the pivotal coupler portion of each clip into the pivotal coupler portion of the other clip from the open side. By doing so, the shaft portions of the two clips are each received in the clamp portion of the other, so that the two clips are coupled together for mutual rotation about each other's shaft portions. In this state, the

holder portions of the two clips are spaced apart a fixed distance, so that the supported members held by the holder portions are spaced apart a proper distance from each other to prevent their mutual interference.

The above and other objects and features of the invention will become more apparent from the following detailed description with reference to the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is an exploded perspective view showing an embodiment of the combination clip according to the invention;

FIG. 2 is a front view showing one of the pair of clips of the combination clip shown in FIG. 1;

FIG. 3 is a left side view showing one of the clips shown in FIG. 1;

FIG. 4 is a right side view showing one of the clips shown in FIG. 1;

FIG. 5 is a plan view showing one of the clips shown in FIG. 1;

FIG. 6 is a bottom view showing one of the clips shown in FIG. 1;

FIG. 7 is a front view showing the two clips coupled together;

FIG. 8 is an exploded perspective view showing a different embodiment of the combination clip according to the invention; and

FIG. 9 is a front view showing the combination clip of FIG. 8 in the coupled state.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

The combination clip according to the invention will now be described in conjunction with a first embodiment of the invention shown in FIGS. 1 to 7. Reference numeral 1 designates the respective members of a pair of plastic clips constituting the combination clip. The two clips 1 are molded using a common mold and are of identical shape.

Each clip 1 has a holder portion 2 provided at one end for detachably holding a supported member and a pivotal coupler portion 5 provided at the other end, the pivotal coupler portion 5 including a cylindrical shaft portion 3 extending from the holder portion 2 and a clamp portion 4 which is open on one side, extends perpendicular to the shaft portion 3 in spaced relation to the free end thereof and is capable of being fitted on the shaft portion 3 of the other clip.

The holder portion 2 has a C-shaped sectional profile and is open at its free end. At the open end, it has flared opposite edge portions 6 serving as guides.

In this embodiment, the pivotal coupler portion 5 includes a side portion 7 perpendicularly extending from one side of a bottom portion 2' integral with the holder portion 2. An intermediate portion 8 extends from an intermediate position of the side portion 7 in parallel with the bottom portion 2'. The shaft portion 3 extends in the gap between the intermediate portion 8 and the bottom portion 2'. The clamp portion 4 extends from the free end of the side portion 7 in parallel with the intermediate portion 8. The clamp portion 4 has a notch formed from its free end. The notch has a circular, more precisely an arcuate, inner portion 9 and flared opposite portions 10 adjacent to its notch.

The clip having above structure is made of a plastic material having adequate rigidity and elasticity. A pair

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of such clips are used in a mutually coupled state. In use, a supported member, e.g. an electric wire 11, is mounted in advance in the holder portion 2 of each clip 1, and then the two clips 1 are coupled together at their pivotal coupler portions 5. Alternatively, the two clips 1 are coupled together in advance, and the electric wires 11 are mounted in the respective holder portions 2 in back-to-back arrangement. The latter case will now be described in greater detail.

The pivotal coupler portions 5 of the two clips 1 are coupled together with their holder portions 2 in back-to-back relation. To couple the two pivotal coupler portions 5, they are fitted sidewise into each other with the clamp portion 4 of each aligned with the gap between the bottom portion 2' and the intermediate portion 8 of the other. Each inserted clamp portion 4 is fitted on the shaft portion 3 of the other clip in the gap between the bottom portion 2' and the intermediate portion 8. At this time, the bifurcated end of the clamp portion 4 comes into engagement with the outer periphery of the shaft portion 3. As the clamp portion 4 is further inserted, the flared opposite end surfaces 10 of its notch are forced apart. When the shaft portion 3 has been received in the inner portion 9, the bifurcated end portion of the clamp portion 4 is restored to its initial state due to its elasticity, so that the shaft portion 3 is retained in the inner portion 9 of the notch of the clamp portion 4. In this state, the intermediate portion 8 of each clip is received in the gap between the clamp portion 4 and the intermediate portion 8 of the other clip. When the two clips 1 are coupled together, their holder portions 2 are spaced apart in back-to-back relation. The two clips 1 are coupled together such that each can be rotated about the other's shaft portion 3. The angular range of rotation is defined by that at which the edges of side portions 7 of the two clips 1 strike against each other.

Thus, using the clips 1 in the coupled state, two wires 11 can be held in the holder portions 2 so as to run in parallel or to cross each other. As a wire 11 is inserted into the holder portion 2 from the open end thereof, the outer periphery of the wire 11 engages and forces apart the flared opposite edge portions 6 of the holder portion 2. When the wire 11 has been received in the holder portion 2, the edge portions 6 restore to the initial state due to their elasticity, so that the outer periphery of the wire 11 is clamped by the inner periphery of the holder portion 2. Since the clips 1 are mutually rotatable, even crossed wires 11 of complicated orientation can be retained by the combination clip. In addition, two wires retained in the two holder portions 2 of the combination clip can be held as properly spaced apart. Further, even if strong forces should accidentally come to act on the wires 11 mounted in the combination clip, they can only be twisted to a limited degree since the relative rotation of the two clips 1 is restricted within a fixed range defined by the positions at which the edges of the side

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portions 7 of the pivotal coupler portions 5 of the clips strike each other. Thus, the wires will not swing excessively or become entangled, so that it is possible to prevent disconnection and contact failure.

FIGS. 8 and 9 show a different embodiment of the invention. This embodiment is different from the preceding embodiment in the pivotal coupler portion of the clip. In this clip, the shaft portion 3 extends from the bottom portion 2' integral with the holder portion 2. The side portion 7 extends along one side of the outer periphery of the shaft portion 3. The C-shaped clamp portion 4 extends perpendicularly from the free end of the side portion 7 in parallel with the bottom portion 2'. With this embodiment, the structure of the pivotal coupler portion 5 is simplified. In addition, the two clips 1 can be coupled together for mutual rotation about their shaft portions 3 by fitting the clamp portion 4 of each on the shaft portion 3 of the other. Further, the range of mutual rotation of the clips is defined by the positions at which the two side portions 7 strike each other.

The combination clip according to the invention can support not only wires or pipes but also plates or parts having other shapes. To facilitate the holding of plates or parts having other shapes, the holder portions may have an anchor-like structure.

As has been described in the foregoing, with the combination clip according to the invention, while the same functions as with the prior art combination clip can be obtained, since the clips of the pair are identically shaped, they can be molded using a common mold, thereby reducing the cost of manufacture. In addition, in use, no need arises to combine clips having different shapes, so that handling is greatly simplified.

What is claimed is:

1. A combination clip comprising a pair of identically shaped clips, each of said clips having a holder portion provided at one end for detachably holding a supported member and a pivotal coupler portion provided at the other end, said pivotal coupler portion including a cylindrical shaft portion and a clamp portion, the clamp portion being substantially cylindrical and open on one side, extending perpendicularly to said shaft portion in spaced relation to the free end thereof and the clamp portion of each clip being capable of being fitted on the shaft portion of the other clip, whereby said pair of clips can be pivotally coupled together for rotation about each other's shaft portions with said clamp portion of each clip fitted on said shaft portion of the other clip.

2. The combination clip as set forth in claim 1 wherein each clip has a transverse wall terminating said cylindrical shaft portion and spaced from said clamp portion.

3. The combination clip as set forth in claim 1 wherein each clip cylindrical shaft portion has a free end spaced axially from the clamp portion.

* * * * *

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United States Patent [19]

Shioda

[11] Patent Number: Des. 295,725

[45] Date of Patent: ** May 17, 1988

[54] RETAINER CLAMP FOR ELONGATED BODIES OR THE LIKE

[75] Inventor: Mitsugu Shioda, Yokohama, Japan

[73] Assignee: Nifco Inc., Yokohama, Japan

[**] Term: 14 Years

[21] Appl. No.: 870,680

[22] Filed: Jun. 4, 1986

[30] Foreign Application Priority Data

Dec. 6, 1985 [JP] Japan 60-50877

[52] U.S. Cl. D8/396; D8/380

[58] Field of Search D8/354, 373, 380, 394,
D8/396, 376, 372; 24/339, 335, 336, 564, 538,
530; 248/74.2, 74.1, 229, 67.5, 68.1, 67.7;
D6/546, 547; D21/230

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Primary Examiner—Wallace R. Burke
Assistant Examiner—Horace B. Fay, Jr.
Attorney, Agent, or Firm—Trexler, Bushnell, Giangiorgi
& Blackstone, Ltd.

[57] CLAIM

The ornamental design for a retainer clamp for elongated bodies or the like, as shown and described.

DESCRIPTION

FIG. 1 is a left side elevational view of a retainer clamp for elongated bodies or the like showing my new design;

FIG. 2 is a front elevational view thereof;

FIG. 3 is a right side elevational view thereof;

FIGS. 4 and 5 are top and bottom plan views thereof;

FIG. 6 is a rear elevational view thereof;

FIG. 7 is a cross-sectional view thereof taken along line VII—VII in FIG. 2;

FIG. 8 is a cross sectional view thereof taken along line VIII—VIII in FIG. 3;

FIG. 9 is a front, top and right side perspective view thereof;

FIG. 10 is a similar perspective view of FIG. 9, with the bottom portion of the retainer clamp rotated 90° from its position in FIG. 9; and

FIG. 11 is a perspective view of the lower portion of the retainer clamp as shown in FIG. 9, shown independently and separately for clarity of illustration.

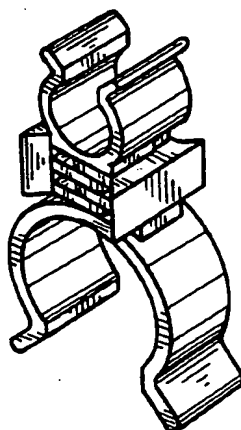


FIG. 1

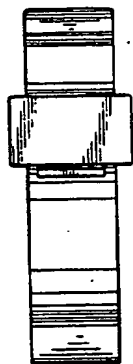


FIG. 2

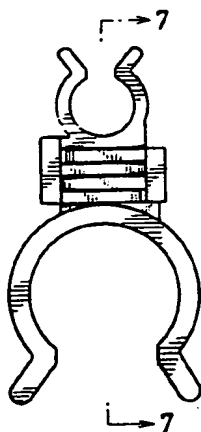


FIG. 3

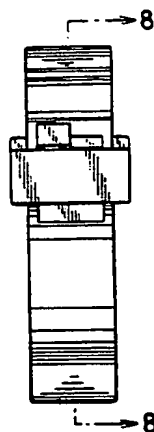


FIG. 4

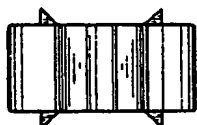


FIG. 5

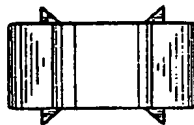


FIG. 6

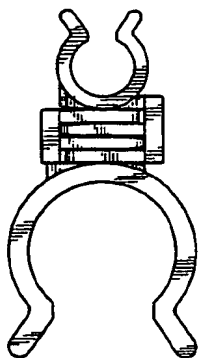


FIG. 7

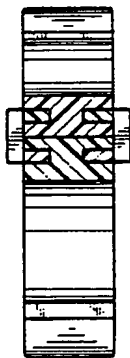


FIG. 8

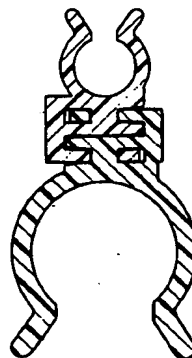


FIG. 9

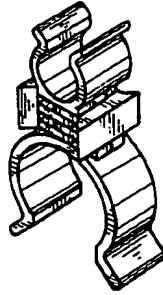


FIG. 11

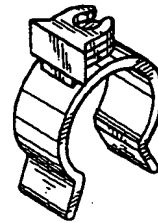
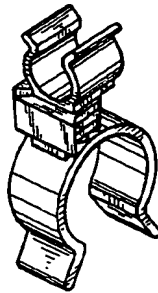


FIG. 10



Applicant: Herbert Howell WADDELL
Client: Herbert Howell WADDELL (357)
File No.: 683
Date: December 29, 2003

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PICKING UP AND CARRYING LOOSE MATERIALS, U.S. Serial No.
09/693,239, filed October 20, 2000, including a check in the amount of ONE
HUNDRED AND SIXTY-FIVE DOLLARS (\$165.00) and Form PTO/SB/31 (08-03)
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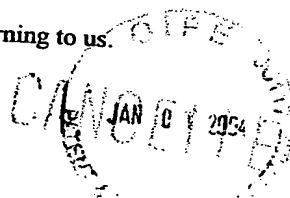
Albert Wai-Kit Chan
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Whitestone, NY 11357

Applicant: Herbert Howell WADDELL
Client: Herbert Howell WADDELL (357)
File No.: 683
Date: December 29, 2003

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
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Whitestone, NY 11357

December 29, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES IN RESPONSE TO
AUGUST 28, 2003 FINAL OFFICE ACTION**

On August 28, 2003, a Final Office Action was issued by the United States Patent and Trademark Office (USPTO) in connection with the above-identified application. A response to the August 28, 2003 Final Office Action was originally due November 28, 2003. On December 04, 2003, Applicant filed a petition for a one-month extension of time and authorized the Commissioner to charge the corresponding fee for the petition for a one-month extension of time to the Deposit Account 50-1891. Therefore, a response to the August 28, 2003 Final Office Action is due December 28, 2003, which is a Sunday. Since a response is due the next business day when the deadline falls on a Saturday, Sunday or a federal holiday, i.e. December 29, 2003, this Amendment is being timely filed.

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239
Filing Date : October 20, 2000
Page : 2

Applicant hereby submits a Notice of Appeal in response to the August 28, 2003 Final Office Action issued by the USPTO in connection with the above-identified application. The Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences is attached herein as Exhibit A (1 page, in duplicate). A Notice of Appeal in response to the August 28, 2003 Final Office Action is due on December 28, 2003. Accordingly, this Notice of Appeal is being timely filed.

The required fee for a Notice of Appeal is ONE HUNDRED AND SIXTY-FIVE DOLLARS (\$165.00). Applicant hereby encloses a check for ONE HUNDRED AND SIXTY-FIVE DOLLARS (\$165.00) to cover the fee for the filing of the Notice of Appeal.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone at the number provided below.

No fee other than the ONE HUNDRED AND SIXTY-FIVE (\$165.00) for filing the Notice of Appeal is deemed necessary in connection with the filing of this NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES IN RESPONSE TO AUGUST 28, 2003 FINAL OFFICE ACTION.

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239
Filing Date : October 20, 2000
Page : 3

However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,

Albert Wai Kit Chan

Albert Wai-Kit Chan
Registration No. 36,479
Attorney for Applicants
Law Offices of
Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, New York 11357
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I hereby certify that this paper is being deposited this date with the U.S. Postal Service with sufficient postage for first class mail addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Albert Wai Kit Chan 12/29/03
Albert Wai-Kit Chan Date
Reg. No. 36,479

EXHIBIT A

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**NOTICE OF APPEAL FROM THE EXAMINER TO
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket Number (Optional)

683

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on December 29, 2003

Signature Albert Wai Kit ChanTyped or printed name Albert Wai-Kit ChanIn re Application of
Herbert Howell WADDELLApplication Number
09/693,239Filed
October 20, 2000For **APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS**Art Unit **3671**Examiner **Robert Pezzuto**Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 1.17(b))

\$ 165.00

- ☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ 165.00
- ☒ A check in the amount of the fee is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1891. I have enclosed a duplicate copy of this sheet.
- ☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☐ attorney or agent of record.
Registration number _____
- ☒ attorney or agent acting under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a) 36,479

Albert Wai Kit Chan
Signature

Albert Wai-Kit Chan
Typed or printed name

(718) 357-8836
Telephone number

December 29, 2003
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 2 forms are submitted.

This collection of information is required by 37 CFR 1.191. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MESSAGE CONFIRMATION

OCT-15-2003 16:23 WED

FILE
683

FAX NUMBER: 7183578615

NAME : LAW OFFICES-A. CHAN

NAME/NUMBER : 17033088623
PAGE : 018
START TIME : OCT-15-2003 16:18 WED
ELAPSED TIME : 04'54"
MODE : G3 STD
RESULTS : [O.K]

Law Offices of Albert Wai-Kit Chan, LLC

World Plaza, Suite 604, 141-07 20th Avenue • Whitestone, NY 11357 • USA
Tel: (718) 357-8836 • Fax: (718) 357-8615 e-mail: kitchanlaw@aol.com

**EXPEDITED PROCEDURE FOR COMMUNICATION AFTER
FINAL REJECTION (37 CFR 1.116)**

**FACSIMILE TRANSMISSION
PLEASE DELIVER THE FOLLOWING PAGES**

TO : EXAMINER ROBERT E PEZZUTO
COMPANY : UNITED STATES PATENT AND TRADEMARK OFFICE
FAX NO. : 703-308-8623
FROM : ALBERT WAI-KIT CHAN
DOCKET : HERBERT H. WADDELL, U.S. PATENT APPLICATION
FOR APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS, U.S. SERIAL NO.
09/693,239, FILED ON OCTOBER 20, 2000 - DKT. #683

TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET : 18

DATE : OCTOBER 15, 2003

* IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS
POSSIBLE TO (718) 357-8836.

Message

Applicant: **Herbert H. WADDELL**
Client: **Herbert H. WADDELL** File No.: 683
Date: **October 15, 2003**

**COMMUNICATION IN RESPONSE TO AUGUST 28, 2003 FINAL OFFICE ACTION for
Herbert H. WADDELL, for APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS, U.S. Serial No. 09/693,239, Filed October 20, 2000.**

THE INFORMATION CONTAINED IN THIS FACSIMILE TRANSMISSION IS INTENDED SOLELY FOR THE PERSONAL AND
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INFORMATION THAT IS CONFIDENTIAL UNDER THE CLIENT AND ATTORNEY RELATIONSHIP. IF THE READER OF THIS
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AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

Law Offices of Albert Wai-Kit Chan, LLC

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Tel: (718) 357-8836 • Fax: (718) 357-8615 e-mail: kitchanlaw@aol.com

EXPEDITED PROCEDURE FOR COMMUNICATION AFTER FINAL REJECTION (37 CFR 1.116)

FACSIMILE TRANSMISSION PLEASE DELIVER THE FOLLOWING PAGES

TO : EXAMINER ROBERT E PEZZUTO

COMPANY : UNITED STATES PATENT AND TRADEMARK OFFICE

FAX NO. : 703-308-8623

FROM : ALBERT WAI-KIT CHAN

DOCKET : HERBERT H. WADDELL, U.S. PATENT APPLICATION
FOR APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS, U.S. SERIAL NO.
09/693,239, FILED ON OCTOBER 20, 2000 – DKT. #683

TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET : 18

DATE : OCTOBER 15, 2003

* IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE TO (718) 357-8836.

Message

Applicant: Herbert H. WADDELL
Client: Herbert H. WADDELL
Date: October 15, 2003

File No.: 683

COMMUNICATION IN RESPONSE TO AUGUST 28, 2003 FINAL OFFICE ACTION for Herbert H. WADDELL, for APPARATUS FOR GATHERING, PICKING UP AND CARRYING LOOSE MATERIALS, U.S. Serial No. 09/693,239, Filed October 20, 2000.

THE INFORMATION CONTAINED IN THIS FACSIMILE TRANSMISSION IS INTENDED SOLELY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENT(S) NAMED ABOVE. THIS TRANSMISSION MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL UNDER THE CLIENT AND ATTORNEY RELATIONSHIP. IF THE READER OF THIS MESSAGE IS NOT A DESIGNATED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO A DESIGNATED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, OR IF UPON READING THIS DOCUMENT YOU HAVE REASON TO BELIEVE THAT THE DOCUMENT WAS INADVERTENTLY SENT TO YOU, PLEASE NOTIFY US IMMEDIATELY BY COLLECT TELEPHONE CALL AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS

Law Offices of Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, NY 11357

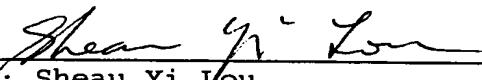
October 15, 2003

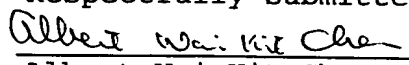
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

FACSIMILE CERTIFICATE
IN CONNECTION WITH THE ABOVE-IDENTIFIED APPLICATION

I hereby certify that this paper is being sent on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Printed Name: Sheau Yi Lou

Respectfully submitted,

Albert Wai-Kit Chan
Registration No. 36,479
Attorney for Applicant(s)
Law Offices of
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141-07 20th Avenue
Whitestone, New York 11357
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EXPEDITED PROCEDURE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS

Law Offices of Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, NY 11357

October 15, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**COMMUNICATION IN RESPONSE TO AUGUST 28, 2003
FINAL OFFICE ACTION**

This Response is submitted in connection with the above-identified application. In the August 28, 2003 Office Action issued by the United States Patent and Trademark Office, the Examiner, to whom this application is assigned, rejected all of Applicant's claims and declared the action Final. A copy of the Office Action is attached hereto as **Exhibit A**.

The deadline for filing this Response is THREE (3) months from the August 28, 2003 mailing date of the Office Action. Accordingly, this Response is timely filed.

No fee is deemed necessary in connection with the filing of this Response. However, if any additional fee is required,

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239
Filing Date : October 20, 2000
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authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Rejection of Claims under 35 U.S.C. § 103(a)

Claims 1-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis (318,359) in view of Decker (4,793,645). The basis for all obviousness rejections is set forth under 35 U.S.C. § 103(a) that provides:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Applicant respectfully traverses and submits that this rejection is in error, as explained more fully below in the responses to the statements made by the Examiner to support the rejection.

RESPONSE TO EXAMINER'S STATEMENTS

A. Immediately after stating the rejection, the Examiner referred to Jones. Jones, 6,120,073, was filed on November 12, 1998, and issued on September 19, 2000. It was not published until it was issued, so was not known to the public when the Applicant filed his provisional application on October 21, 1999. Therefore, Jones has no relevance to this case.

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U.S. Serial No. : 09/693,239
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B. Next, the Examiner Stated that:

"The Davis patent, as well as many other pieces of cited art, show and teach that it is very well known and common to attach two similar earth working tools together in order to grasp material between the tools. Davis further shows and teaches to use a metal, moveable hinge type device between the tools to make such an attachment."

The Applicant respectfully asserts that the post hole digging device of Davis is only functional when the two shovels are engaged in a rigid metal coupling that prevents rotation or other motion except in the desired scissors fashion in opposition to each other. The "metal, moveable hinge type device" can be moved, but not to another functional position. The device has no useful function if one shovel is moved along the shaft of the other and rotated. Therefore, Davis, with its rigid coupling that only works in one configuration, teaches away from use of a flexible coupling that is functional when moved from place to place along the shafts of the two grasping devices, and which permits the device to serve useful functions when the grasping elements are rotated around their axes.

C. Next, the Examiner states:

"The Decker reference's sole use was to display that it is very obvious to make such a hinge from an elastomer material such as rubber."

Decker '645 discloses that two handles can be attached to a snow shovel with a hinge in such a way that a "swing shovel" is formed that requires less stooping and lifting by the operator. The end of one handle is connected by a hinge of

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Filing Date : October 20, 2000
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elastomeric material to the shaft of the other handle. Movement of the hinge along the shaft or rotation of the handles is undesirable, so the hinge is fixed (in the words of the inventor) to the handles with adhesives or other means. The hinge is designed to permit only minimal side to side relative motion of the two handles about the pivot point, that is, to act as a hinge and not as a completely flexible coupling. The flexible coupling is fixed in place, so cannot be moved along the shafts and the shafts can not be rotated along their axes.

If the apparatus of Davis '359 is provided with the teachings of Decker '645, one would have a post hole digger with a fixed, flexible coupling just above the shovel heads. The coupling could not be moved to other functional positions along the shafts of the two grasping devices. Both Davis and Decker rely on methods of fixing the components in a single functional configuration, and do not teach nor suggest that it would be desirable to use a moveable flexible coupling to extend the functional range of a grasping device. Therefore, Davis and Decker taken together do not teach or suggest all limitations in independent claim 1 b) of the Applicant's invention, namely:

b) a flexible coupling means which can be moved along the shafts of the grasping elements to connect them together while permitting each of them to rotate along the axes of their shafts and to pivot with respect to each other so that the grasping heads can be brought together or moved apart from each other.

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This claim emphasizes that the entire apparatus, grasping elements and coupling together, has a useful function wherever the coupling is placed along the shafts. This is also expressed in the specification, where it states:

"The coupling can be placed anywhere along the shafts at the convenience of the user to facilitate drawing together of the grasping means."

Section 2143.03 of the Manual of Patent Examining Procedure (1995) states:

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 USC 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988).

Davis and Decker taken together do not meet the standard of In re Royka that "all the claim limitations must be taught or suggested by the prior art".

D. Next, the Examiner states:

"The attorney states that the Davis reference is more than 180 [sic] years old and should bear on obvious modification. The point is well taken by the Examiner

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who strongly believes that if such a device was manufactured today, it would be of the elastomer material as taught by Decker if for no other reasons than cost and ease of manufacture."

The point that should be taken from a nearly one hundred eighteen year old patent is that if the new idea is really obvious from an old patent, someone should have discovered it before now, as stated in cited cases in our January 31, 2003 reply to the January 9, 2003 office action and in our appeal brief filed timely on October 15, 2002. Furthermore, post hole digger devices are still manufactured today with Fixed, rigid metal hinge couplings, and the Applicant is not aware of any commercial post hole diggers that are made with elastomeric couplings, whether fixed or moveable. Therefore, regarding the use of elastomeric couplings for opposed grasping devices, the Applicant respectfully traverses and submits that post hole diggers with elastomeric couplings are not known in the art.

The very long time that the devices to gather, pick up and carry loose materials have been known and improved by scores of inventions argues that no one has thought of the Applicant's invention in all that time and that it was not obvious to those skilled in the art. The Supreme Court has long established the principle that such secondary considerations as "long felt but unsolved needs [and] failure of others" may be relevant as indicia of obviousness or nonobviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966). "Thus evidence rising out of the so-called 'secondary considerations' must always when present be considered en

Applicant : Herbert Howell Waddell
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route to a determination of obviousness." Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 1538, 218 USPQ 871, 876 (Fed. Cir. 1983) (quoting In re Sernaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983)). Evidence of secondary considerations may often be the most probative and cogent evidence in the record and all pieces of evidence should be fully considered and each should be given appropriate weight. Id. 1538-1539. Therefore, Applicant respectfully submits that the Examiner consider that no one has thought of the claimed invention despite the fact that the devices to gather, pick up and carry loose materials have long been known and improved by scores of inventions.

E. The Examiner then cited additional patents "for the applicant's examination". Since these references, which appeared for the first time in a final rejection action, were not included in the rejection statement as required for consideration, their relevance in the office action is not clear to the Applicant.

Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively stated in the rejection. See In re Hoch, 57 CCPA 1292, 428 F.2d 1341, 166 USPQ 406, footnote 3 (1970)

All three references pertain to clips with open jaws on each end for holding cylindrical objects together in a static relationship. In Kramer '332 and Schioda, et al '961 the clips are manufactured from plastic materials. In Shioda '725, a design patent, the material is not mentioned. Kramer '332 claims a resilient web that acts like a fulcrum between

Applicant : Herbert Howell Waddell
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the opposing sets of jaws to allow them to operate somewhat like a pair of pliers, i.e. if you squeeze one set of jaws together, the other set opens. In Shioda, Two single-ended clips are joined to make a double-ended clip similar to that in Kramer. In the Shioda patents there is no need for resilience except in the jaws so that the clip can be attached to objects. In both Kramer and Shioda there is no intent to provide the degree of flexibility required by the coupling of the Applicant's invention, nor to provide the strength to resist the large dynamic forces that the coupling in the Applicant's device must withstand.

Obviously, the material used in the clips must be quite stiff or the jaws would not hold the items to be clipped together. As a result, clips would lack the flexibility required in the claimed grasping device. Furthermore, if a clip from Kramer or Shioda was substituted for the coupling used in the Applicant's invention, the shafts of the grasping devices would slip out the open jaws of the clip when force was applied, such as when grasping leaves with a pair of coupled rakes. Therefore, one looking for ways to improve grasping devices would not consider the teachings of Kramer and Shioda. In such case, when the Examiner relies on inventions other than that claimed in a patent application in showing that "some objective teaching" in the prior art would have suggested the claimed subject matter to a person of ordinary skill in the art, the Examiner is required to designate the particular part relied on as nearly as practical. 37 C.F.R. § 1.104(c) (2) provides in pertinent parts:

In rejecting claims for . . . obviousness, the Examiner must cite the best references at his or her

Applicant : Herbert Howell Waddell
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command. When a reference . . . shows or describes inventions other than that claimed by the Applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. (emphasis added)

CONCLUSION

For the above reasons, Applicant respectfully requests that the above remarks be entered and made of record in the present application. An allowance is earnestly requested.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone at the number provided below.

Respectfully submitted,



Albert Wai-Kit Chan
Registration No. 36,479
Attorney for Applicant
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Exhibit A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,239	10/20/2000	Herbert Howell Waddell	IP-902	8560

7590 08/28/2003

ALBERT WAI-KIT CHAN
WORLD PLAZA, SUITE 604
141-07 20TH AVENUE
WHITESTONE, NY 11357

EXAMINER

PEZZUTO, ROBERT ERIC

ART UNIT	PAPER NUMBER
----------	--------------

3671

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/693,239

Applicant(s)

WADDELL, HERBERT HOWELL

Examiner

Robert E Pezzuto

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Note to the attorney of record: The Office Action dated January 8, 2003 was not an answer to the appeal brief filed October 22, 2002 but rather to reopen prosecution of the application on the merits in light of new art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis '359 in view of Decker '645. Jones discloses an apparatus for gathering materials (figures 1-4), the apparatus comprising two grasping elements (A,A') each which have shafts (F) with grasping means (B,B') at one end. Also, Jones shows the shafts being of 0.5 to 3 inches in diameter and two to six feet in length (as seen in figures 1-3) and the grasping means having tines (as best seen in figure 1). Further, Davis teaches that it is well known in the art to connect to implements (figures 1-3) with a relatively moveable coupling means (figure 4), the handles being turnable within the coupling means when moved to the non-square portions of the handles (as seen in figures 1-3)

but fails to show the coupling means made of a flexible material. However, Decker clearly teaches that it is known in the art to provide a hinged coupling means between two handles of such an implement (figures 1-3) and to construct that coupling means from a flexible material (column 2, lines 27-40). It would have been obvious to one having ordinary skill in the art to provide the apparatus of Davis with the teachings of Decker in order to provide a material gathering apparatus with a greater operational range.

In response to the applicant's arguments is the following: The Davis patent, as well as many other pieces of cited art, show and teach that it is very well known and common to attach two similar earth working tools together (shovels in Davis, rakes in Jones, etc) in order to grasp material between the tools. Davis further shows and teaches to use a metal, moveable hinge type device between the two tools to make such attachment. The Decker reference's sole use was to display that it is very obvious to make such a hinge from an elastomer material such as rubber. The attorney states that the Davis reference is more than 180 years old and should bear on obvious modification. This point is well taken by the examiner who strongly believes that if such a device was manufactured today, it would be of the elastomer material as taught by Decker if for no other reasons then cost and ease of manufacture. Cited for the applicant's examination are more recent patents that disclose devices employed to joint two cylindrical objects. The material of choice for these connectors again being an elastomer/plastic material.

Applicant's arguments filed January 31, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert E Pezzuto whose telephone number is (703) 308-1012. The examiner can normally be reached on 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on (703) 308-3870. The fax phone numbers

Application/Control Number: 09/693,239

Page 5

Art Unit: 3671

for the organization where this application or proceeding is assigned are (703) 308-8623 for regular communications and (703) 308-8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1212.


Robert E Pezzuto
August 22, 2003



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,239	10/20/2000	Herbert Howell Waddell	IP-902	8560

7590 11/14/2003

ALBERT WAI-KIT CHAN
WORLD PLAZA, SUITE 604
141-07 20TH AVENUE
WHITESTONE, NY 11357

EXAMINER

PEZZUTO, ROBERT ERIC

ART UNIT	PAPER NUMBER
----------	--------------

3671

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/693,239

Applicant(s)

WADDELL, HERBERT HOWELL

Examiner

Robert E Pezzuto

Art Unit

3671

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-15.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Robert E Pezzuto
Primary Examiner
Art Unit 3671

Auto-Reply Facsimile Transmission



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DEC-04-2003 09:23 FROM: LAW OFFICES-A. CHAN 7183578615

TO:

P.001

Law Offices of Albert Wai-Kit Chan, LLC

World Plaza, Suite 604, 141-07 20th Avenue • Whitestone, NY 11357 • USA
Tel: (718) 357-8836 • Fax: (718) 357-8615 e-mail: kitchanlw@aol.com

RESPONSE UNDER 37 CFR §1.116 EXPEDITED PROCEDURE

FACSIMILE TRANSMISSION PLEASE DELIVER THE FOLLOWING PAGES

TO : EXAMINER ROBERT E PEZZUTO
ART UNIT: 3671

COMPANY : UNITED STATES PATENT AND TRADEMARK
OFFICE

FAX NO. : (703) 872-9327

FROM : ALBERT WAI-KIT CHAN

DOCKET : Herbert H. WADDELL, U.S. PATENT APPLICATION
FOR APPARATUS FOR GATHERING, PICKING UP
AND CARRYING LOOSE MATERIALS, U.S. Serial No.
09/693,239, FILED OCTOBER 20, 2000 - DKT. #683

TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET: 8

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World Plaza, Suite 604, 141-07 20th Avenue • Whitestone, NY 11357 • USA
Tel: (718) 357-8836 • Fax: (718) 357-8615 e-mail: kitchanlaw@aol.com

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RESPONSE UNDER 37 CFR §1.116
EXPEDITED PROCEDURE
Dkt. #683

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS

Law Offices of Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, NY 11357

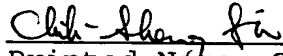
December 04, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

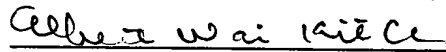
FACSIMILE CERTIFICATE
IN CONNECTION WITH THE ABOVE-IDENTIFIED APPLICATION

I hereby certify that this paper is being sent on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Printed Name: Chih-Sheng Lin

Respectfully submitted,



Albert Wai-Kit Chan
Registration No. 36,479
Attorney for Applicant(s)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS

Law Offices of Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, NY 11357

December 04, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**COMMUNICATION IN RESPONSE TO AUGUST 28, 2003 FINAL OFFICE
ACTION, NOVEMBER 14, 2003 ADVISORY ACTION, PETITION FOR ONE-
MONTH EXTENSION OF TIME AND PETITION FOR THE WITHDRAWAL OF THE
FINALITY OF THE AUGUST 28, 2003 FINAL OFFICE ACTION**

This Communication is submitted in response to the August 28, 2003 Final Office Action in connection with the above-identified application. A response was originally due THREE (3) months from the August 28, 2003 Final Office Action, i.e. November 28, 2003. Applicant hereby petitions for one-month extension of time and authorize the Commissioner to charge the corresponding fee of FIFTY-FIVE (\$55.00) DOLLARS to the Deposit Account 50-1891. Accordingly, a response now is due December 28, 2003. Therefore, this response is being timely filed.

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239
Filing Date : October 20, 2000
Page : 2

Remarks

This communication is in response to the August 28, 2003 Final Office Action, but an earlier Final Office Action was issued on February 12, 2002. In response to that, a Notice of Appeal was filed and an Appeal Brief was filed on October 20, 2002. Then on January 6, 2003, without notice that the Final Action was withdrawn, an Office Action was issued rejecting all claims on different grounds than in the Final Office Action.

In the January 9, 2003 Office Action, the Examiner to whom this application is assigned rejected all of Applicant's claims. On January 31, 2003 Applicant filed a response to the January 9, 2003 Office Action. In the August 28, 2003 Office Action issued by the United States Patent and Trademark Office, the Examiner rejected all of Applicant's claims by citing new grounds of rejection and declared the action Final. On October 15, 2003, the Applicant filed a Communication in response to the August 28, 2003 Final Office Action traversing the Examiner's objections and/or rejections. On November 14, 2003, the Examiner issued an Advisory Action stating that the October 15, 2003 Communication will not be entered without responding to any of the Applicant's grounds for traversing Examiner's rejections and/or objections.

On January 9, 2003, the Examiner issued an Office Action and stated that "Claims 1-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davis (318,359) in view of Decker (4,793,645). Immediately after stating the rejection, the Examiner referred to Jones, which was not published when the subject application was filed.

On January 31, 2003, Applicant filed a response traversing the

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239
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Examiner's rejections and/or objections.

On August 28, 2003, the Examiner issued a Final Office Action and stated that "Claims 1-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Davis (318,359) in view of Decker (4,793,645). The examiner again referred to Jones. Moreover, the Examiner introduced an additional three references, but stated no reason for using these for his rejections.

On October 15, 2003, the Applicant filed a Communication in response to August 28, 2003 Final Office Action traversing each and every ground of the Examiner's rejections and/or objections, and also arguing against the new references.

On November 14, 2003, the Examiner issued an Advisory Action. In the November 14, 2003 Advisory Action, the Examiner stated that:

"The [October 15, 2003] proposed amendment will not be entered because it is not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal."

However, the Examiner has failed to respond substantively to the October 15, 2003 Communication. In fact, Applicant did not present any proposed amendment, and has established convincing argument for allowing the claims in this Application. Lacking substantive responses to the October 15, 2003 communication, and also lacking an explanation of the relevance of the new cases introduced in the August 28, 2003 rejection, the Applicant will have difficulty preparing a new appeal brief.

Applicant : Herbert Howell Waddell
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Filing Date : October 20, 2000
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Manual of Patent Examining Procedure (MPEP) §707(f) provides in relevant part:

"Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

If it is the examiner's considered opinion that the asserted advantages are without significance in determining patentability of the rejected claims, he or she should state the reasons for his or her position in the record, preferably in the action following the assertion or argument relative to such advantages. By so doing the applicant will know that the asserted advantages have actually been considered by the examiner and, if appeal is taken, the Board of Patent Appeals and Interferences will also be advised.

The importance of answering such arguments is illustrated by *In re Herrmann*, 261 F.2d 598, 120 USPQ 182 (CCPA 1958) where the applicant urged that the subject matter claimed produced new and useful results. The court noted that since applicant's statement of advantages was not questioned by the examiner or the Board of Appeals, it was constrained to accept the statement at face value and therefore found certain claims to be allowable. See also *In re Soni*, 54 F.3d 746, 751, 34 USPQ2d 1684, 1688 (Fed Cir. 1995) (Office failed to rebut applicant's argument)."

Accordingly, Applicant respectfully requests that the Examiner state his reasons for repeating his rejection and/or objections to the claims and respond to Applicant's arguments set forth in the October 15, 2003 Communication.

Applicant respectfully requests the Examiner withdraw the finality of the August 28, 2003 Final Office Action. MPEP §706.07(e) provides that "once a final rejection... has been entered in an application, it should not be withdrawn at the applicant's... request except on a showing under 37 CFR §1.116(b).

Applicant : Herbert Howell Waddell
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37 CFR §1.116(b) provides in relevant part:

"If amendment touching on the merits of the application... are presented after final rejection... they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented."

Since the Examiner did not address the Applicant's arguments traversing the Examiner's objection and/or rejections as required under MPEP §707(f), and Applicant could not present arguments earlier with regard to new material included in the final rejection, Applicant respectfully requests the Examiner withdraw the finality of the August 28, 2003 Final Office Action and respond to Applicant's October 15, 2003 response on the merits.

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239
Filing Date : October 20, 2000
Page : 6

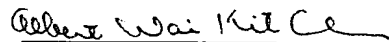
CONCLUSION

For the above reasons, Applicant respectfully requests that the above remarks be entered and made of record in the present application. An allowance is earnestly requested.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone at the number provided below.

No fee is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,



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Attorney for Applicant
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